IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

Bail Appl..No. 7696 of 2007(B)

(CRIME NO. 494/2007 OF PATHANAPURAM POLICE STATION)
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PETITIONERS/ACCUSED 2 & 3:
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1. **NOUSHAD, S/O. ABDUL AZEEZ,**
   THEMKUDICHAL HOUSE, MAMGODE, PATHANAPURAM,
   KOLLAM DISTRICT.

2. **NISSAR, S/O. UDUMAN,**
   PALLITHEKKETHIL HOUSE, MANAKKATTUPUZHA,
   MANGODE, PATHANAPURAM, KOLLAM DISTRICT.

BY ADV. SRI.B.MOHANLAL,
ADV. SRI.S.SAIJU.

RESPONDENT/ COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
PATHANAPURAM POLICE STATION, KOLLAM DISTRICT
THROUGH THE PUBLIC PROSECUTOR,HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/12/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 7696 of 2007

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Dated this the 13th day of December, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 2 and 3. Altogether there are three accused persons. They face allegations of having committed offences punishable under Section 379 r/w. 511 I.P.C. The defacto complainant is the Manager of the State Farming Corporation at Pathanapuram. It was realised that some persons were coming into the rubber estate of the Corporation and illegally removing rubber latex. Security guards were posted by the defacto complainant. On the date in question, the security personnel found that some persons had entered into the estate and had tapped the rubber trees. Latex was dripping from the trees. They waited for the miscreants to come. Three persons came and they were collecting latex from one line of the trees. At that point of time attempt was made to apprehend them. All of them ran away. But they were able to identify the miscreants. Next morning the first accused was

apprehended. F.I. statement was lodged. Names of the three accused persons were shown in the F.I. statement. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. They have not been properly identified. The petitioners were not the ones who allegedly ran away on that night. In any view of the matter, no valid allegation of attempt of theft can be made in the given circumstances. The allegations in the F.I. statement do not reveal the commission of an offence of attempt to commit theft.

3. The learned Prosecutor opposes the application. The case diary clearly shows that the petitioners were the miscreants and there was unmistakably an attempt to commit theft of rubber latex from the trees belonging to the State Farming Corporation.

4. I have considered all the relevant inputs. I have perused the case diary. In particular I have been taken through the statement of the security guard specially posted to detect the theft. I am satisfied that there are no features in this case, which would justify the invocation of

the extra ordinary equitable discretion under section 438 Cr.P.C. in favour of the petitioners. This, I agree with the learned Prosecutor, is a fit case where the petitioners must be directed to appear before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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